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5 Attorneys for Defendant
BECKETT MEDIA, LLC and
6 UBIQUITY DISTRIBUTORS INC.

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**
11

12 SUMMIT ENTERTAINMENT, LLC, a
13 Delaware limited liability company

14 Plaintiff,

15 v.

16
17 BECKETT MEDIA, LLC, a Delaware
Corporation, and DOES 1-10, inclusive,

18
19 Defendants.
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CASE NO.: CV09-8161 PSG (MANx)

**ANSWER OF DEFENDANT
UBIQUITY DISTRIBUTORS INC.
TO SECOND AMENDED
COMPLAINT OF SUMMIT
ENTERTAINMENT, LLC**

[DEMAND FOR JURY TRIAL]

Complaint filed November 6, 2009

1 Defendant Ubiquity Distributors Inc. ("Defendant"), for itself and for no other
2 defendant, in response to the Second Amended Complaint of plaintiff Summit
3 Entertainment, LLC ("Plaintiff") admits, alleges and denies as follows:

4 1. Admits that in Paragraph 1 Plaintiff has pled an Action that would meet
5 the Jurisdictional requirements of this Court.

6 2. Admits that Paragraph 2 purports to set forth Plaintiff's legal contentions
7 regarding "venue."

8 3. Denies for lack of sufficient knowledge or information each allegation in
9 Paragraph 3.

10 4. Denies for lack of sufficient knowledge or information each allegation in
11 Paragraph 4.

12 5. Denies for lack of sufficient knowledge or information each allegation in
13 Paragraph 5.

14 6. Admits each allegation in Paragraph 6.

15 7. Denies for lack of sufficient knowledge or information each allegation in
16 Paragraph 7.

17 8. Denies for lack of sufficient knowledge or information each allegation in
18 Paragraph 8.

19 9. Admits that Plaintiff was "involved in," and received credit, respecting
20 the movies "*TWILIGHT*" and "*NEW MOON*" and except for those admissions, denies
21 for lack of sufficient knowledge and information the remaining allegations in
22 Paragraph 9, and asserts that the movies "*TWILIGHT*" and "*NEW MOON*" speak for
23 themselves as to their respective content.

24 10. Denies for lack of sufficient knowledge or information to form a belief as
25 to the truth of the averments in Paragraph 10.

26 11. Denies for lack of sufficient knowledge or information to form a belief as
27 to the truth of the averments in Paragraph 11.
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1 12. Deny for lack of sufficient knowledge or information each allegation in
2 Paragraph 12.

3 13. Admits that, among other things, Defendant is a publisher of sports and
4 entertainment collectibles and memorabilia magazines.

5 14. Denies for lack of sufficient knowledge or information each allegation in
6 Paragraph 14.

7 15. Admits [i] that one of Beckett's "Teen Sensations" magazines, contained,
8 *inter alia*, reproductions of photographs and a poster (and asserts that the photographs
9 and the poster speak for themselves as to their respective content), [ii] that the word
10 "twilight" appears on the cover of the said magazine and [iii] that the figures "U.S.
11 \$9.99" appear on the cover of said magazine and [iv] that Ex. A to Plaintiff's
12 Complaint appears to be a copy of the said magazine, and, except as admitted, denies
13 the remaining allegations in Paragraph 15.

14 16. Admits that Beckett's magazine used the font "on the right," and, except
15 as admitted, denies the remaining allegations in Paragraph 16.

16 17. Denies for lack of sufficient knowledge or information each allegation in
17 Paragraph 17.

18 18. Denies for lack of sufficient knowledge or information each allegation in
19 Paragraph 18.

20 19. Denies for lack of sufficient knowledge or information each allegation in
21 Paragraph 19.

22 20. Admits [i] that Beckett marketed another one of its "Teen Sensations"
23 magazines, containing, *inter alia*, reproductions of photographs and a poster (and
24 asserts that the photographs and the poster speak for themselves as to their respective
25 content), [ii] that the word "twilight" appears on the cover of the said magazine, [iii]
26 that the figures "U.S. \$9.99 • Can. \$14.99" appear on the cover of said magazine and
27 [iv] that Ex. D to Plaintiff's Complaint appears to be a copy of the said magazine, and,
28

1 except as admitted, denies the remaining allegations in Paragraph 20.

2 21. Denies for lack of sufficient knowledge or information each allegation in
3 Paragraph 21.

4 22. Denies for lack of sufficient knowledge or information each allegation in
5 Paragraph 22.

6 23. Denies the allegations in Paragraph 23.

7 24. Denies for lack of sufficient knowledge or information each allegation in
8 Paragraph 24.

9 25. Denies for lack of sufficient knowledge or information each allegation in
10 Paragraph 25.

11 26. Denies for lack of sufficient knowledge or information each allegation in
12 Paragraph 26.

13 27. Denies for lack of sufficient knowledge or information each allegation in
14 Paragraph 27.

15 28. Admits that Ubiquity is a distributor of magazines. Admits that Ubiquity
16 distributed some of Beckett's "Teen Sensations Presents: Twilight" magazines.
17 Denies the remaining allegations in Paragraph 28 for lack of information.

18 29. Denies that Ubiquity had "knowledge of the TWILIGHT marks." Denies
19 each remaining allegation in Paragraph 29 for lack of information and knowledge.

20 30. Denies each allegation in Paragraph 30.

21 31. Defendant repeats and realleges each and every allegation in Paragraphs
22 1 through 30 above, as though fully set forth herein.

23 32. Defendant denies the contentions in Paragraph 32.

24 33. Defendant denies the contentions in Paragraph 33.

25 34. Defendant denies the contentions in Paragraph 34.

26 35. Defendant denies the contentions in Paragraph 35.

27 36. Defendant denies the contentions in Paragraph 36.

- 1 37. Defendant denies the contentions in Paragraph 37.
- 2 38. Defendant denies the contentions in Paragraph 38.
- 3 39. Defendant repeats and realleges each and every allegation / contention of
- 4 Paragraphs 1 through 38, above, as though fully set forth herein.
- 5 40. Defendant denies the contentions in Paragraph 40.
- 6 41. Admits that Ubiquity distributed some of the “Teen Sensation”
- 7 magazines. Denies each remaining allegation in Paragraph 41 for lack of information
- 8 and knowledge.
- 9 42. Defendant denies the contentions in Paragraph 42.
- 10 43. Defendant denies the contentions in Paragraph 43.
- 11 44. Defendant denies the contentions of Paragraph 44.
- 12 45. Defendant denies the contentions in Paragraph 45.
- 13 46. Defendant denies the contentions in Paragraph 46.
- 14 47. Defendant repeats and realleges each and every allegation / contention of
- 15 Paragraphs 1 through 46 above, as though fully set forth herein.
- 16 48. Defendant denies the contentions of Paragraph 48.
- 17 49. Defendant denies the contentions of Paragraph 49.
- 18 50. Defendant denies the contentions of Paragraph 50.
- 19 51. Defendant denies the contentions of Paragraph 51.
- 20 52. Defendant generally denies the contentions of Paragraph 52, and
- 21 specifically denies that Plaintiff is entitled to recover from Defendant any damages.
- 22 53. Defendant generally denies the contentions of Paragraph 53, and
- 23 specifically denies that Plaintiff is entitled to recover from Defendant any “gains,
- 24 profits, or advantages” Defendant has obtained as a result of its acts.
- 25 54. Defendant denies that Plaintiff is entitled to any of the remedies available
- 26 under 15 U.S.C. § 1117 and/or § 1118.
- 27 55. Defendant repeats and realleges each and every allegation / contention of
- 28

1 Paragraphs 1 through 54 above, as though fully set forth herein.

2 56. Defendant denies the contentions of Paragraph 56 for lack of sufficient
3 knowledge or information.

4 57. Defendant denies for lack of sufficient knowledge or information and
5 belief the contentions in Paragraph 57.

6 58. Defendant denies for lack of sufficient knowledge or information to form
7 a belief as to the truth of the averments in Paragraph 58.

8 59. Defendant denies for lack of sufficient knowledge or information each
9 allegation in Paragraph 59.

10 60. Defendant denies the contentions in Paragraph 60.

11 61. Defendant denies for lack of sufficient knowledge or information each
12 allegation in Paragraph 61.

13 62. Defendant denies for lack of sufficient knowledge or information each
14 allegation in Paragraph 62.

15 63. Admits that Ubiquity distributed "Teen Sensation" magazines. Denies
16 each remaining allegation in Paragraph 63 for lack of information and knowledge.

17 64. Defendant generally denies the contentions in Paragraph 64 and
18 specifically denies that Plaintiff has suffered any damages and/or is entitled to recover
19 any damages, including, without limitation, the "gains, profits and/or advantages"
20 derived by Beckett from its publications and/or statutory damages under the Copyright
21 Act of the United States.

22 65. Defendant denies the contentions of Paragraph 65.

23 66. Defendant repeats and realleges each and every allegation of Paragraphs
24 1 through 65, above, as though fully set forth herein.

25 67. Defendant denies the contentions of Paragraph 67, generally and
26 specifically.

27 68. Defendant generally denies the contentions of Paragraph 68 and
28

1 specifically denies that Plaintiff has been damaged, irreparably or at all, and that
2 Plaintiff is entitled to any relief, particularly: (a) injunctive relief, restraining and
3 enjoining Defendant from any lawful acts; (b) awarding Plaintiff any damages; (c)
4 requiring Defendant to account to Plaintiff for Defendant's profits from the marketing
5 of its "goods"; (d) the award of any of Defendant's profits to Plaintiff; and / or (e)
6 punitive (or any other) damages.

7 69. Defendant repeats and realleges each and every allegation / contention of
8 Paragraphs 1 through 68, above, as though fully set forth herein.

9 70. Defendant denies for lack of sufficient knowledge or information each
10 allegation in Paragraph 70.

11 71. Defendant denies for lack of sufficient knowledge or information each
12 allegation in Paragraph 71.

13 72. Defendant denies for lack of sufficient knowledge or information each
14 allegation in Paragraph 72.

15 73. Defendant denies for lack of sufficient knowledge or information each
16 allegation in Paragraph 73.

17 74. Defendant denies for lack of sufficient knowledge or information each
18 allegation in Paragraph 74.

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20 **Affirmative Defenses**

21
22 **FIRST AFFIRMATIVE DEFENSE**
23 **(No Claim Stated)**

24 75. Plaintiff's Complaint fails to state facts sufficient to constitute a claim for
25 relief against Defendant.

26 **SECOND AFFIRMATIVE DEFENSE**
27 **(17 U.S.C. § 412)**
28

1 76. To the extent Plaintiff has failed to comply with the provisions of
2 17 U.S.C. § 412, Plaintiff's purported claims for relief are limited and/or barred.

3
4 **THIRD AFFIRMATIVE DEFENSE**
5 **(17 U.S.C. § 411 (a))**

6 77. To the extent Plaintiff has failed to comply with the provisions of
7 17 U.S.C. § 411 (a), Plaintiff's purported claims for relief are barred.

8 **FOURTH AFFIRMATIVE DEFENSE**
9 **(Unclean Hands)**

10 78. Plaintiff's purported claims for relief are barred in whole or in part by
11 reason of its unclean hands.

12 **FIFTH AFFIRMATIVE DEFENSE**
13 **(Lack of Standing)**

14 79. Plaintiff's purported claims for relief are barred in whole or in part
15 because of Plaintiff's lack of standing to prosecute its claims.

16 **SIXTH AFFIRMATIVE DEFENSE**
17 **(Fair Use)**

18 80. To the extent any such "use" occurred, which Defendant denies, but here
19 assumes merely for the sake of argument, Plaintiff's purported claims for relief are
20 barred in whole or in part by the doctrine of fair use.

21 **SEVENTH AFFIRMATIVE DEFENSE**
22 **(First Amendment)**

23 81. To the extent any such "use" occurred, which Defendant denies, but here
24 assumes merely for the sake of argument, Plaintiff's purported claims for relief are
25 barred in whole or in part because the purported use of Plaintiff's purportedly
26 copyrightable materials constituted a use protected by the First Amendment to the
27 United States Constitution.
28

EIGHTH AFFIRMATIVE DEFENSE
(De Minimis Use)

82. To the extent any such “use” occurred, which Defendant denies, but here assume merely for the sake of argument, Plaintiff’s purported claims for relief are barred in whole or in part by the doctrine of *de minimis* use.

NINTH AFFIRMATIVE DEFENSE
(No Willful Infringement)

83. To the extent any such “use” occurred, which Defendant denies, but here assume merely for the sake of argument, Plaintiff’s purported claims for relief are barred in whole or in part because Defendant’s use was not willful.

TENTH AFFIRMATIVE DEFENSE
(Statue of Limitations)

84. Plaintiff’s claim for relief is barred and limited by the provisions of 17 U.S.C. § 507.

ELEVENTH AFFIRMATIVE DEFENSE
(Protectability)

85. To the extent that Plaintiff relied on facts or purported facts, ideas, scenes-a-faire, clichés and conventions of story telling, its claims are barred.

TWELFTH AFFIRMATIVE DEFENSE
(Laches)

86. Plaintiff’s purported claims and any prayer for relief based thereon or otherwise are barred by the doctrine of laches.

THIRTEENTH AFFIRMATIVE DEFENSE
(Waiver)

1 87. Plaintiff's purported claims and any prayer for relief based thereon or
2 otherwise are barred by waiver.

3
4 **FOURTEENTH AFFIRMATIVE DEFENSE**
5 **(Estoppel)**

6 88. Plaintiff's purported claims and any prayer for relief based thereon or
7 otherwise are barred by the principle of estoppel.

8
9 **FIFTEENTH AFFIRMATIVE DEFENSE**
10 **(Consent)**

11 89. To the extent any such "use" occurred, which Defendant denies, but here
12 assume merely for the sake of argument, Plaintiff's purported claim and any prayer for
13 relief based thereon or otherwise are barred in whole or in part because Plaintiff
14 expressly or impliedly consented to the complained of conduct.

15
16 **SIXTEENTH AFFIRMATIVE DEFENSE**
17 **(Failure to Mitigate)**

18 90. After the occurrence of the alleged loss and damage to Plaintiff, Plaintiff
19 failed and refused to mitigate its damages, and by reason thereof, is barred from
20 recovery from Defendant.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**
22 **(Proof of Copying of Protectable Expression)**

23 91. The First Amendment to the United States Constitution requires that
24 Plaintiff must prove by clear and convincing evidence that Defendant has copied
25 protectible expression from Plaintiff's work.

26
27 **EIGHTEENTH AFFIRMATIVE DEFENSE**
28 **(Proof of Allocating Defendant's Profits)**

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2 92. The First Amendment to the United States Constitution requires that
3 Plaintiff, not Defendant, must meet its burden of proving by clear and convincing
4 evidence that proportion, if any, of Defendant's profits that is allocable to the alleged
5 infringement by Defendant.

6 **NINETEENTH AFFIRMATIVE DEFENSE**
7 **(License)**

8 93. To the extent any such "use" occurred, which Defendant denies, but here
9 assume merely for the sake of argument, Plaintiff's purported claim and any prayer for
10 relief based thereon or otherwise are barred in whole or in part because Plaintiff
11 expressly or impliedly granted a license to the complained of conduct.

12 WHEREFORE, Defendant prays as follows:

13 1. That the Complaint be dismissed with prejudice and that Plaintiff take
14 nothing herein;

15 2. That Defendant be awarded its costs of suit, including its reasonable
16 attorneys' fees, incurred in defense of this action; and

17 3. That Defendant be awarded such other and further relief as the Court may
18 deem just and proper.

19
20 DATED: August 16, 2010

LEOPOLD, PETRICH & SMITH
A Professional Corporation

21
22 By: /s/ - Nicholas Morgan

23 _____
24 Joel McCabe Smith
25 Nicholas Morgan
26 Attorneys for Defendant
27 Beckett Media, LLC
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